

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT SEATTLE

JASPAL SINGH WALIA,

Plaintiff,

v.

SEATTLE GOODWILL, et al.,

Defendants.

CASE NO. C07-1251-RSL

ORDER DENYING MOTION
 FOR APPOINTED COUNSEL

Plaintiff has filed a *pro se* complaint in this Court pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., alleging employment discrimination based on retaliation for his filing of a complaint with the Equal Employment Opportunity Commission (EEOC) on December 3, 2004. (*See* Dkt. # 1). This matter is currently before the Court on Plaintiff's Motion for Appointed Counsel. (Dkt. # 2). Defendants have filed opposition to the motion on grounds that Plaintiff's claims are not sufficiently meritorious to warrant appointment of counsel (Dkt. #14), and Plaintiff has filed a response (Dkt. #16). Having reviewed Plaintiff's motion, and the balance of the record, the Court does hereby find and ORDER:

(1) There is no constitutional right to appointed counsel for employment discrimination claims. *Ivey v. Board of Regents of the University of Alaska*, 673 F.2d 366, 369, (9th Cir. 1982) (citing *Moore v. Sun-Beam Corp.*, 459 F.2d 811 (5th Cir. 1977)). However, 42

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1 U.S.C. § 200e-5(f)(1) authorizes the appointment of counsel “in such circumstances as the court
2 may deem just.” The factors are relevant to the Court’s determination of whether to appoint
3 counsel: (1) the plaintiff’s financial resources; (2) the efforts made by the plaintiff to secure
4 counsel; and (3) whether the plaintiff’s claim has merit. *Bradshaw v. Zoological Society of San*
5 *Diego*, 662 F.2d 1301, 1318 (9th Cir. 1981); *Ivey*, 673 F.2d at 269.

6 Here, Plaintiff satisfies the second factor, which requires that a plaintiff make what can be
7 considered a reasonably diligent effort under the circumstances to obtain counsel. *Bradshaw*,
8 662 F.2d at 1319. In his motion, Plaintiff indicates that from mid-March 2007 to early
9 November 2007, he contacted fifteen law firms who could not represent him for one reason or
10 the other. (Dkt. #2 at 2). However, Plaintiff does not appear to satisfy the first and third
11 factors. However, Plaintiff fails to make a sufficient showing of indigency to satisfy the
12 first factor. Plaintiff has not sought or been granted *in forma pauperis* status in this matter.
13 Moreover, while the statute does not require that one be a pauper before counsel may be
14 appointed, Plaintiff’s financial affidavit reflects that he and his spouse, together have monthly
15 income of \$4,000, he has cash in a savings or checking account, and he owns bank CDs of
16 significant value. (Dkt. #2 at 6).

17 Additionally, Plaintiff does not appear to satisfy the third factor for appointment of
18 counsel as he has not demonstrated that his retaliation claims have merit. Plaintiff claims that
19 after he filed a discrimination complaint with EEOC in December 2004, the defendants retaliated
20 against him through acts that allegedly included false allegations, work harassment, denial of
21 promotion/transfer, denial of training, negative performance appraisals, threat, frivolous action
22 plans, frivolous warning, creation of hostile work environment, criticizing him but refusing to tell
23 him what he did wrong, refusing to follow up on his responses, setting him up for termination,
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1 trying to undermine his official position, and having a disengaged attitude. (*See* Dkt. #1 at 4).
2 Thereafter, Plaintiff filed charges of discrimination based on retaliation with the EEOC in July
3 2006 and in January 2007. (*See* Dkt. #1, Ex. 40 and Ex. 51). The EEOC separately dismissed
4 each of these charges on the following basis:

5 The EEOC issues the following determination: *Based upon its investigation, the*
6 *EEOC is unable to conclude that the information obtained establishes violations*
7 *of the statutes.* This does not certify that the respondent is in compliance with the
statutes. No finding is made as to any other issues that might be construed as
having been raised by this charged.

8 (Dkt. #1 at 70-71) (emphasis added).

9 When evaluating the merits of a Title VII claim, the determination of the EEOC as to the
10 merits of the claim is not preclusive, but it is considered highly probative. *Caston v. Sears,*
11 *Roebuck & Co.*, 556 F.2d 1305, 1309 (5th Cir. 1977). Here, Plaintiff contends that the EEOC's
12 dismissal of the charges was unjustified and unexplained because the EEOC failed to produce
13 and document any findings of facts about the retaliation allegations; the EEOC investigator cited
14 a lack of time and resources on their part to sufficiently devote to the investigation; and the
15 EEOC failed to research the objective truth, choosing to ignore his substantial evidence in favor
16 of statements presented by defendant Seattle Goodwill. (Dkt. #2 at 3). However, in the section
17 of the EEOC's dismissal of Plaintiff's retaliation charges that is emphasized above, the EEOC
18 clearly indicates that it conducted an investigation, and Plaintiff has not produced any evidence
19 other than his own allegations to refute that an investigation occurred.

20 Moreover, this court finds that the EEOC's determination was supported by substantial
21 evidence because along with the particulars of Plaintiff's charges and defendant Seattle
22 Goodwill's responses thereto, the EEOC was also provided copies of many of the key exhibits
23 that Plaintiff proffers in support of the present employment discrimination action (e.g., Plaintiff's
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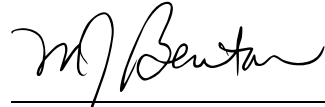
1 performance reviews for and Action Plans for 2005 and 2006, written warning/Employee
2 Intervention form to Plaintiff in 2005 and 2006, and Plaintiff's written responses to these
3 documents). (*See* Dkt. # 15, Ex. 4 nn. 2-13).

4 Thus, given the significant level of Plaintiff's financial resources and in the absence of a
5 showing that his suit has a reasonable likelihood of success on the merits, these circumstances do
6 not warrant appointment of counsel.

7 (2) Accordingly, Plaintiff's Motion for Appointed Counsel (Dkt. #2) is DENIED.

8 (3) The Clerk is directed to send a copy of this Order to Plaintiff, to counsel for
9 Defendants, and to the Honorable Robert S. Lasnik.

10 DATED this 22nd day of January, 2008.

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13 MONICA J. BENTON
14 United States Magistrate Judge
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